Remarks

Applicant has amended Claims 5-8 to correct the non-complaint markings used in the 3/13/06 Amendment.

Applicant has amended the disclosure on Page 8 as requested in numerated Paragraph 5 of the instant Office Action.

Applicant has amended Claim 1 to overcome the noted Claim objections.

Claim Rejection under 35 U.S.C. § 112

Claims 1-9 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended Claim 1 to delete the phrase "such as" and the subsequent subject matter and added new Claims. Applicant submits the amended Claim 1 is definite and further submits dependent Claims 2- are now dependent upon a definite claim. Accordingly, Applicant requests withdrawal of this ground of rejection.

Claim Rejections

Double Patenting, I

Claims 1-9 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 12-14, 16 and 17 of co-pending Application No. 10/728,029. Applicant respectfully traverses this provisional rejection and notes Examiner's acknowledgement of the fact that if the provisional double patenting rejections remain as the only objections in the pending Application and the rejections are made in the co-pending application, the Examiner will withdrawal the rejections.

Double Patenting, II

Claims 1-9 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-7 of co-pending Application No. 10/648,601. Applicant respectfully traverses this provisional rejection and notes Examiner's acknowledgement of the fact that if the provisional double patenting rejections remain as the only objections in the pending Application and the rejections are made in the co-pending application, the Examiner will withdrawal the rejections.

Double Patenting, III

Claims 1-3 and 5 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claim 2 of U.S. Patent No. 6,780,939 alone or in view of Oyama et al. Applicants traverse this ground of rejection. Applicants herein submit the enclosed Terminal Disclaimer under 37 CFR 1.321 in view of U.S. Patent No. 6,780,939 to overcome the pending rejection. Further Applicants resubmit that the pending Claims are patentable in view of Oyama et al. as submitted in the previous Response dated March 13, 2006.

Patentably Distinct

Claims 1-3 and 5 stand rejected as an invention that is not patentably distinct from Claim 2 of commonly assigned U.S. Patent No. 6,780,939. Applicant traverses this ground of rejection and herein submit the following statement showing the conflicting inventions were commonly owned at the time the invention in this application was made:

STATEMENT OF COMMON OWNERSHIP

Application No. 10/648,867 and U.S. Patent No. 6,780,939 were, at the time the invention of Application No. 10/648,867 was made both owned by Bayer Inc., now LANXESS Inc. Accordingly, Applicant submits, based on the statement above U.S. Patent No. 6,780,939 is precluded as a basis for the pending rejection.

35 U.S.C. § 103(a)

Claims 1-3 and 5 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,780,939 in view of Oyama et al. Applicant traverses this rejection. Applicant submits that U.S. Patent No. 6,780,939 is disqualified under 35 U.S.C. § 103(a) as prior art in a rejection under 35 U.S.C. § 103(a) because the subject matter developed under U.S. Patent No. 6,780,939 and the claimed invention were, at the time the claimed invention was made, was subject to an obligation of assignment to the same person. **As noted in the statement above, reprinted herein, Application No. 10/648,867 and U.S. Patent No. 6,780,939 were, at the time the invention of Application No. 10/648,867 was made both owned by Bayer Inc., now LANXESS Inc.** Accordingly, Applicant submits U.S. Patent No. 6,780,939 is disqualified as prior art in a rejection under 35 U.S.C. § 103(a). Further Applicants resubmit that the pending Claims are patentable in view of Oyama et al. as submitted in the previous Response dated March 13, 2006.

Double Patenting IV

Claims 1-3 and 5-9 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 103, 6-8, 10, 11 and 13 of co-pending Application No. 10/685,232. Application No. 10/685,232 has been allowed and the issue fee has been paid, accordingly as the patent directed to Application No. 10/685,232 will issue shortly, Applicants herein submit the enclosed Terminal Disclaimer under 37 CFR 1.321 in view of Application No. 10/685,232 to overcome the pending rejection. Further Applicants resubmit that the pending Claims are patentable in view of Oyama et al. as submitted in the previous Response dated March 13, 2006.

Patentably Distinct

Claims 1-3 and 5-9 stand rejected as an invention that is not patentably distinct from Claim 2 of commonly assigned co-pending Application No. 10/685,232. Applicant traverses this ground of rejection and herein submit the following statement showing the conflicting inventions were commonly owned at the time the invention in this application was made:

STATEMENT OF COMMON OWNERSHIP

Application No. 10/648,867 and Application No. 10/685,232 were, at the time the invention of Application No. 10/648,867 was made both owned by Bayer Inc., now LANXESS Inc. Accordingly, Applicant submits, based on the statement above Application No. 10/685,232 is precluded as a basis for the pending rejection.

Double Patenting V

Claims 1-5 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-5 of co-pending Application No. 10/726,379. Applicant respectfully traverses this ground of rejection.

Applicant further submits, both the present application and Application No. 10/728,029 are pending, allowable subject matter, not withstanding the provisional obviousness-type double patenting rejection has not been indicated in either application. Where a provisional rejection under the judicially created doctrine of obviousness-double patent is made between two applications MPEP § 804(I)(B) states that "if the provisional double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the provisional double patenting rejection in the other application into a double patenting rejection as the time the one applications issues as a patent." Therefore, it is not evident which of the pending applications will become allowable first, and any action by Applicant with regard to this provisional rejection is premature.

Patentably Distinct

Claims 1-5 stand provisionally rejected as an invention that is not patentably distinct from Claims 1-5 of commonly assigned co-pending Application No. 10/726,379. Applicant traverses this ground of rejection and herein submit the following statement showing the conflicting inventions were commonly owned at the time the invention in this application was made:

STATEMENT OF COMMON OWNERSHIP

Application No. 10/648,867 and Application No. 10/726,379 were, at the time the invention of Application No. 10/648,867 was made both owned by Bayer Inc., now LANXESS Inc. Accordingly, Applicant submits, based on the statement above Application No. 10/726,379 is precluded as a basis for the pending rejection.

Respectfully submitted,

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